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MAILED
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OFFICE OF PETITIONS

In re Patent No. 7,728,191 : DECISION ON REQUEST
Masaharu Kuroda : FOR
Issue Date: 06/01/2010 : RECONSIDERATION OF
Application No. 10/539,992 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 04/12/2006 :
Atty Docket No. :
59150-8035 :

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(d) AFTER PATENT ISSUANCE, filed on June 19, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by at least one thousand two hundred twenty-nine (1229) days.

The petition to correct the patent term adjustment is **DISMISSED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. § 154(b) of nine hundred thirty-four (934) days.

The calculation of delay pursuant to 37 CFR 1.702(b) is based on a national stage commencement date under 35 U.S.C. 371(b) of June 20, 2005, which is 30 months after the priority date of December 20, 2002. As such, the "B" delay period begins on June 21, 2008, the day after the date three years after the commencement date under 35 U.S.C. 371 and ends on June 1, 2010, the date the application issued as a patent, and is 711 days.

Patentee argues that the period of Office delay under 37 CFR 1.702(a)(1) should be calculated from June 20, 2005, the date the application commenced the national stage, rather than April 12, 2006, and that, therefore, the period of Office delay under 37 CFR 1.702(a)(1) is 668 days, rather than 373 days as calculated by the Office.

Patentee's argument has been considered, but is not persuasive. 37 CFR 1.702(a)(1) states that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

(1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or **fulfilled the requirements of 35 U.S.C. 371 in an international application.**

(emphasis added)

While this application commenced the national stage on June 20, 2005, the requirements of 35 U.S.C. 371 were not fulfilled until April 12, 2006. Accordingly, the period of Office delay under § 1.702(a)(1) is the period beginning on the day after the date fourteen months after date the application fulfilled the requirements of 35 U.S.C. 371. On June 19, 2008, fourteen months and 373 days after the day after the date the application fulfilled the requirements of 35 U.S.C. 371, April 12, 2006, an Office action was mailed. Accordingly, the delay under § 1.702(a)(1) is 373 days.

Lastly, it is noted that patentee states that the total period of reduction due to applicant delay is 149 (122 + 17 + 10) days, rather than 150 days as calculated by the Office. However, on October 20, 2009, an Office action was mailed. On January 21, 2010, three months and one (1) day after the date the Office action was mailed, a reply was filed. Accordingly, a (1) day period of reduction for applicant delay was assessed pursuant to § 1.704(b). Accordingly, the total period of reduction for applicant delay is 150 (122 + 17 + 1 + 10) days.

Therefore, no change will be made to the patent term adjustment of 934 (373 days Office delay + 711 days three years delay – 150 days of applicant delay) days indicated on the face of the issued patent.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.



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